

Good afternoon. It is an honor for me to be here today for the 2018 DCBA Law Day Luncheon.

Now normally, I would begin my remarks with a light-hearted story that introduces the theme of my talk. The story would probably involve my time with the Chicago Bears, and it would almost certainly be self-deprecating. That's the standard approach I use when I speak, and people seem to enjoy it, and no doubt many of you have heard just such a speech from me, maybe even at this very event.

But not today. Today, I am not going to be light-hearted, or funny, or self-deprecating. I'm not going to tell jokes, and I'm not going to pause for laughs. Because today, I want to talk about something that is deeply serious, something that impacts not only our profession but also our nation, and something that calls for a response – a response not so much in words or in action, but rather in attitude. In posture. In perspective.

Now some of you may have heard me deliver similar remarks at the 2014 Supreme Court Dinner. I am revisiting them today because, as relevant as they were in *2014*, the political and social landscape of America in *2018* makes them even more urgent than when I first delivered them almost four years ago.

The theme of today's event is Separation of Powers: A Framework for Freedom. And while I will not speak *directly* to that theme, I will speak to it *indirectly*.

Because at this unique moment in history, what *divides* us as Americans has the very real potential to overwhelm what *unites* us. And until *those* wounds are healed – until some sense of unity and common purpose is restored – the very institutions that the separation-of-powers doctrine exists to fortify will cease to function with any degree of effectiveness. I believe we are already starting to see this.

As we gather this afternoon, our nation is suffering a crisis of trust. No one can deny this, and unlike previous seasons of uncertainty, this one seems to penetrate every sphere of life.

Politically, the country is polarized and divided in a way that I have not seen before in my lifetime. More and more, people with whom we disagree politically are seen not as well-intentioned neighbors whom we might seek to persuade, but rather as bitter enemies who threaten our very way of life. In such a climate, compromise is not only impossible, it's no longer even a goal that either side is seeking.

This is true of immigration reform, health care policy, gun control, judicial appointments, the tax code, trade policy, the Mueller Investigation, you name it – on each of these issues, the country is angry and polarized and not the least bit interested in meeting in the middle.

But it's worse than that. Because it seems that, on each of these issues, no matter how things look on the ground, each side is convinced that it is on the *losing* side, so that the resulting dynamic is not one of winners and losers, but one in which *everyone* feels like his or her values, his or her issues, are being marginalized.

Think about it. It has been a little over one year since the last Presidential election. And large portions of both the *winning* candidate's supporters, and the *losing* candidate's supporters, remain equally convinced that their way of life is perpetually under threat.

We are sitting in one of those very rare historical moments in which the same party controls both Congress *and* the White House. And yet, a recent Reuters poll shows that only 24% of Americans believe that the country is on the right track, while 64% believe it is on the wrong track. Something deeper than party politics is at work here.

And institutionally, the situation is no better. In fact, it might be worse. Millions of our citizens do not accept the legitimacy of the sitting president, while just as many millions do not accept the legitimacy of the national media and press.

A little over one year into his Presidency, Donald Trump's job approval rating hovers somewhere in the low-to-mid 40's, and it has never cracked 50%, even in the famous "honeymoon" period.

And meanwhile, down the street at the Capitol, Congress's approval rating sits at a shocking *16%*, while its *disapproval* rating is nearly *75%*.

But even more telling is this: Historically, Americans have tended to hold Congress *as an institution* in very low esteem, while holding their own local representative in very *high* esteem. In other words, the problem isn't *my* Congressman, it's everyone *else's* Congressman.

Not anymore. An ABC news poll recently confirmed that, for the first time in the 25-year history of that poll, more than half the country disapproves not only of Congress *as an institution*, but also of *their own local representative*. This has never happened before, and it is deeply illustrative of the crisis of trust we are facing.

And all the while, sizable portions of the American electorate are clamoring for the other party's presidential candidate to be indicted, prosecuted, and imprisoned.

And then there is the criminal justice system. From Ferguson to St. Louis, the last few years have seen large segments of our population completely lose trust in our criminal justice system. And *this* crisis strikes at the very heart of the system that you and I serve.

When trust breaks down in Washington, or on Wall Street, that's important. And that's unfortunate. But there's not a whole lot you and I can do directly in response, to restore trust and move things forward, because we are not in Washington, and we are not on Wall Street.

But we do serve the legal system. And that system is at the heart of an ongoing crisis, and there is no question that for many in our country, trust in the legal system – in the system you and I serve – has broken down.

Look at what we've been seeing for going on three years now.

Protesters taking to the streets by the thousands, with slogans like "Hands Up Don't Shoot." "Black Lives Matter." And "The System Didn't Fail; It worked. *That's the Problem.*"

Students at our elite law schools, including Harvard, Berkeley, and Penn, staging walk outs and die-ins to protest a grand jury's refusal to indict, or a jury's decision to acquit.

Calls for systemic criminal justice reforms from voices as diverse as Senator Bernie Sanders and Senator Rand Paul.

NFL players by the hundreds kneeling while the National Anthem plays, in protest of what they perceive as systemic racial injustice in the American criminal justice system.

Yes, events like the shooting in Ferguson and the officer acquittal in St. Louis are catalysts for the current wave of response. But what's clear is these events did not *cause* the underlying mistrust and resentment.

On the contrary, the high-profile events of the past years and months are born of a deep division, a deep mistrust, that exists in our country. And though that division is now boiling over, the reality is that it is always simmering just beneath the surface, just waiting for a Michael Brown, a Trayvon Martin, an Eric Garner, to release it.

In many of these cases, we will never know exactly what happened. There is no video footage, and the eyewitness accounts often tell a variety of stories.

But even if we never know exactly what happened in a *particular* case, the events *that follow* teach us a great deal about what is going on in our country *right now*.

They teach us that racial division, and racial mistrust, is still very much a part of the American landscape.

They teach us that, in many parts of America, trust has broken down completely between the community and the police, and that for many, the appearance of law enforcement provokes not comfort or security, but rather suspicion and fear.

They teach us that, to many in our community, the criminal justice system appears rigged, existing not to ascertain truth or dispense justice, but instead to punish the weak and protect the powerful.

But most of all, they teach us once again that, in so many areas of life - race, crime, poverty, class, justice - there seems to exist two very different Americas, defined by two very different perspectives, and populated by people who do not understand, and do not trust, either each other or the institutions that shape and govern life in the United States.

And we can talk all day long about who is right and who is wrong, about who gets it and who doesn't, about whose vision of America is true and whose vision of America is false. And the cable news channels will do exactly that, every night – keeping the conversation going but never moving it forward.

But when trust has broken down, conversations about who is right and who is wrong, about who gets it and who doesn't, are fruitless. Because no one is listening to each other anymore, and each side simply assumes that the other side is motivated not by a good faith pursuit of truth, but rather by an agenda, or by prejudice, or even by malice.

So what do we do, how do we respond, to the situation we find ourselves in? To an overwhelming breakdown in trust in the very system we serve.

In the New Testament book of James, the apostle writes:

"Consider it pure joy, my brothers and sisters, whenever you face trials of many kinds, because you know that the testing of your faith produces perseverance. And let perseverance finish its work, so that you may be mature and complete, not lacking anything."

At the heart of this passage is the idea that it is not the *trials* we face that define us, but rather how we *respond* to those trials when they come. Because in our response, our character is revealed, and we learn, perhaps for the very first time, who we really are, what we truly believe, where we put our hope and trust.

And as I see it, there are two possible responses to the current crisis. We can choose cynicism and despair, or we can choose hope.

In cynicism and despair, we resign ourselves to the *status quo*, expect the worst, and look out for ourselves. We surround ourselves with people who see things the same way we do, and we turn our backs to those whose experiences and perspectives challenge, or even threaten, our own.

Cynicism and despair are about preserving and surviving, rather than growing and healing. They're about not letting things get worse, rather than striving to make things better. They're about hunkering down, rather than reaching out.

So yes, we can choose cynicism and despair. And in fact many of us do.

But we can also choose hope. And hope, as you would expect, looks very different.

In hope, we intentionally and regularly remind ourselves – daily if necessary – of the ideals and principles that inform the system we serve, and we commit ourselves over and over again to ensuring that those ideals and principles are realized and vindicated in every case that crosses our desk.

We commit ourselves to ensuring that, to the extent it is within our power, the shadow of injustice, inequality, or corruption never taints the work we ourselves do.

And we commit ourselves to ensuring that the laws set forth in the Constitution and passed by the legislature actually *mean* something. That the private contracts we enter into are worth the consideration that was exchanged. And that rights set forth on paper are not just empty promises, incapable of enforcement or vindication by a neutral tribunal. But instead are real, tangible things that are never out of reach, and always ours to enjoy.

It has been said that the law is a teacher. That through its mandates and proscriptions, society is schooled in what is right and what is wrong, what are the acceptable standards of human behavior, what are the rules defining and governing proper human interaction.

Our task, our *responsibility*, is to ensure that the law is a *good* teacher. And in moments such as this, when trust breaks down, to respond in such a way that the best angels of our nature are reflected not only in the law's *words*, but also in its enforcement and application. Every time. No exceptions.

In his Letter from Birmingham Jail, Dr. Martin Luther King, Jr. teaches us that:

*“A **just** law is a man-made code that squares with the moral law or the law of God. An **unjust** law is a code that is out of harmony with the moral law. *** Any law that **uplifts** human personality is just. Any law that **degrades** human personality is unjust.”*

I believe that, in these words, we find the fuel for ensuring that we never lose hope in what we do, in the system we serve, or in the awesome potential each of us has to make a difference for good.

In the very first chapter of Genesis, we are taught that God created humanity in His own image. And while this means many things, it *at least* means that each of us, from the most powerful to the most vulnerable, from the law-abiding to the law-breaking, bears within us – somewhere, somehow – the image of our Creator. That whatever else separates us, *that truth - that identity* - always unites us.

And I think that *this* idea is what informs Dr. King's vision of human personality, and is what he asks the law to uplift and affirm, rather than degrade or debase.

Because imagine if we - as neighbors and citizens, as attorney and judges - truly perceived one another in the terms that Dr. King invites. Not with suspicion or indifference or alienation, but with unity and trust and affection. Because we are all of one source, and despite our superficial and temporary differences, we are in fact perfectly united in a deep, and profound, and eternal way.

I have no doubt that a society informed by *this* understanding of humanity would be a society defined by dignity and equality, a society in which degradation and despair simply had no place, because in uplifting each other, we are uplifting the God who created us.

In the opening paragraphs of that same letter, Dr. King writes that:

*“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects **one** directly, affects **all** indirectly. Never again can we afford to live with the narrow, provincial ‘outside agitator’ idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.”*

As we gather today, our nation is suffering a crisis of trust. As officers and agents of the law, our response must not be to give in to that sense of mistrust, to give in to cynicism and despair.

Instead, our challenge, our *responsibility*, is to recognize that we are indeed "caught in an inescapable network of mutuality, tied in a single garment of destiny," and to use the awesome privilege we have been given as attorneys and judges to ensure that, whatever *the perception* of the law and legal system might be, it is always and only ever fair, equitable, and just in practice.

And to the extent each of us plays a part in making that happen, I hope and expect that the justice we pursue, and the justice we bring, will be utterly unimpeachable.

That is what hope and trust demand, and it is the very least we owe to one another.

Thank you.